

1 about the same as I did before. I have to spend a big part  
2 of my day checking to see if the insurance is paid. So he  
3 can make sure he knows how much he's getting. Remember,  
4 these are the guys that are getting paid 6 bucks a bat,  
5 piecework, doctors doing piecework. Six bucks a bat. That  
6 was an important part of this scheme because it helped keep  
7 everything moving. Now go ahead and remove the highlighting.

8 Go back to page 1 of this document. You are the judge of  
9 the credibility of the witness. You heard Doctor Taylor try  
10 to distance himself from his own words in this document. You  
11 need to evaluate whether or not a statement written by one  
12 co-conspirator, Taylor to another co-conspirator, Burns,  
13 during the course of the conspiracy is more believable as to  
14 what he was really thinking and what he was really believing  
15 than the testimony he has given before you this week or last  
16 week. You have to think about, when is there a motive to  
17 lie? When is there a motive -- when is there not a motive?  
18 You have to think about did he have any idea at the time he  
19 was writing this letter, sending it to Burns, it was going to  
20 be put in his personnel file and found by the Government many  
21 months later.

22 If I could have up Exhibit 1-133. Things that bother me  
23 lately. You remember this letter too. Go ahead. Talk of  
24 ethics. Just testing for money; no other reason. Testing  
25 for money, no other reason. Taylor's own words. Same

1 paragraph. I understand it's a big facility, testing is  
2 needed but it should be for the right reasons, not because we  
3 have bought an expensive piece of equipment and that we are  
4 told that we can make a lot of money off of it and it must be  
5 paid for. That tells you exactly what he knew. He knew that  
6 they were doing this -- all this testing to pay for the  
7 equipment. As an aside, who sold them that equipment? The  
8 testimony is a great deal of it came from Halstead. He  
9 arranged for the purchase of it. That was part of the  
10 scheme. Get them to buy all this expensive equipment so they  
11 can over -- utilize it so they can bill everybody for it. Go  
12 ahead and remove the highlighting please.

13 All right. Here's where they offered him a twenty-five  
14 percent partnership. Filcheck was apparently offered the  
15 same thing, a little less than twenty-five percent so that  
16 they would only end up owning forty-nine percent between the  
17 two of them. The problem was they just weren't offered a big  
18 enough piece of the pie. That's why they're a disgruntled  
19 employee but a disgruntled member of a criminal enterprise is  
20 still a member of a criminal enterprise.

21 Go to the next page. Let's go right down to the  
22 arguments. I don't like lying to patients why they need a  
23 particular test.

24 You are the sole judge of the credibility of these  
25 witnesses. You determine what you believe and what you don't

1 believe. Was he lying about lying? Or was he just  
2 uncomfortable?

3 All right. Let's go on. The same document, last  
4 sentence, I didn't go through it. You're welcome to read it  
5 and review it. This is Exhibit 1-134. We are told to keep  
6 the patients as long as possible. That was part of the  
7 scheme. Keep them there, keep them rolling, this is what  
8 they were required to do. Keep them there as long as  
9 possible so they can get their 6 bucks a bat. You heard him  
10 to rationalize Doctor Taylor in his own words. You are the--  
11 you are the ones who determine the credibility of these  
12 witnesses. Which is more believable, what he wrote to Burns  
13 during the course of the conspiracy, what he testified to in  
14 this courtroom? Think about when there was a motive to lie  
15 and when there was no motive to lie.

16 You have the admissions of Defendant Filcheck. Filcheck  
17 told the agents, temperature gradient routinely being given  
18 of the patients, routinely being billed to the insurance  
19 companies, as long as the insurance companies would pay for  
20 it.

21 The treatment and testing protocols were established by  
22 Halstead and Burns and that his co-schemers, Burns and Twigg  
23 had told him that if the insurance companies would cover the  
24 test, he should perform them and that they were going to bill  
25 for them.

1 He admitted that the letters of medical necessity that he  
2 was involved with eighty to ninety percent of the time were  
3 bogus and that means that the tests were bogus because there  
4 was no need for them.

5 Okay. Let's deal with some of the admissions of  
6 Defendant Halstead. Let's go to Burns IOV Number 2. These  
7 directly -- these are quotes from the Burns' IOV's.

8 "Identify all patients that he tested on the  
9 neurometer and start testing now. Losing tremendous  
10 income. Loss each month of almost \$80,000.  
11 Diagnostic ultrasound not running tests. Schedule  
12 patients, bill; don't wait. Ask if going to pay,  
13 losing" -- next page please. "Not doing enough  
14 diagnostic testing. Must do more. Range of motion,  
15 ADL, muscle testing, nerve conduction and stay on  
16 top of it. \$33,600 loss in revenue in May alone."  
17 Next screen. "Do functional capacity on all patients three  
18 times, beginning, middle and end." Next page please.

19 "It's costing -- let's get on top of diagnostic  
20 testing. It's costing you approximately \$120,000 a  
21 month in the last month. You're over a thousand  
22 therapies short, only averaging one therapy per  
23 patient per visit."

24 He's not telling them how to treat each individual  
25 patient because he's telling them how to treat all the

1 patients. This is cookie cutter medicine. Everybody gets  
2 everything.

3 Let's go to what Doctor Halstead said to some of his  
4 other IOV clients at about the same time he was talking to  
5 Burns. Can I have Exhibit 1-419 please? Okay. You have a  
6 major problem that's costing you a fortune. I repeat, not  
7 doing enough therapy. I told you about this the first visit.  
8 You've not corrected it. It's costing you \$10,000 a month.  
9 Every patient that can should get three therapies now. Go  
10 through treatment cards and bump a therapy on every active  
11 patient you can. That means to add a therapy on every active  
12 patient that you can. Everybody is going to get added  
13 therapy, not because they need it but because you can.

14 Can I have the Burns IOV Number 3 please? Again, what is  
15 Halstead telling Burns. Many patients have great coverage  
16 and you could get paid much more. Every patient should get  
17 three therapies. Must pay attention to coverage. Do not do  
18 procedures that the insurance company doesn't cover. It  
19 distorts the collection ratio to bill for services that are  
20 not chargeable. That's what he's telling them. Do it if the  
21 insurance company will pay for it.

22 Can I have the next page please? You really need to  
23 clean up these patients that are getting care that have no  
24 coverage on their insurance or their insurance has run out or  
25 they have a large balance. Yes, they produce visit numbers

1 but they're false numbers if you can't or don't get paid.  
2 Must clean this up. This is what Halstead is telling Burns.  
3 One co-conspirator to another co-conspirator. Same time  
4 frame, he's also telling -- Halstead is also telling his  
5 other clients on Exhibit 1-418, get neurometer up and  
6 running. Do neurometer on all patients who have coverage.  
7 Get diagnostic ultrasound up and running. Do tests on all  
8 patients who have coverage. Down towards the bottom. Do  
9 neurometers. Need to do more neurometers. Do on all  
10 patients who have coverage. Start range of motion testing on  
11 all patients who have coverage. No medical necessity. The  
12 word is coverage. You know what that means. It means  
13 insurance coverage.

14 I was there. I grabbed 15 EOB, explanation of benefits  
15 at random. People, many of them, had great coverage and only  
16 getting two PT's, no rehab, hardly any diagnostic testing.  
17 People who have great coverage only coming in two or one time  
18 per week. People who now had a hundred percent coverage  
19 dropping out. I could go on but you saw it. This is the  
20 major problem number two. You must fix this now.

21 This is what he's telling his clients. This is what he's  
22 telling them, directly on point with what's going on. Go  
23 ahead and remove that, blank the screen please.

24 Halstead was the mastermind behind this, was an integral  
25 part of this scheme. He told you that he was there eleven

1 visits and that's technically true, but actually he was there  
2 every day. He was in that office every single day. He was  
3 there because he was a doing a -- helping them with their  
4 marketing, directing their marketing. He was providing  
5 faxes, forms, telephone calls. Every day he was calling the  
6 shots in this clinic. It was part of his plan to make sure  
7 that the cookie cutter medicine was enforced by everybody.

8 Let's go to Exhibit 1-422 please. This is some of  
9 Halstead's words to other IOV clients on the role of a  
10 medical doctor. You need to get an MD up and going  
11 especially for Blue Cross/Blue Shield. It will pay for  
12 itself one hundred times over. You absolutely must get an MD  
13 at least four to five hours per week now. It will help  
14 insurance coverage and how much is coming in.

15 Let's go down to this last one. I've underlined part of  
16 it. It is an absolute must that you bill practically  
17 everything under the MD corporation. The way you are doing  
18 it causes a quote "red light" at the insurance company. It  
19 was part of his plan to conceal from the insurance companies  
20 exactly what they were doing. They did not want people to  
21 know that these were chiropractors performing these services.  
22 By doing it the way they were doing it, billing through some  
23 other way then through the medical corporation was creating a  
24 red light at the insurance company, letting the insurance  
25 company know what these people were really doing.

1           Now there came a time -- go ahead and remove that and  
2 bring up the lights. There came a time during the cross-  
3 examination of Halstead when they were talking about meeting  
4 Doctor Medina and he said he had never met Doctor Medina and  
5 why did you never meet the captain of the ship? The man  
6 directing all the medical care at this facility, the guy who  
7 was asleep in his office and reading golf magazines, why did  
8 you never meet him? And Halstead said because Burns told him  
9 that Medina didn't speak English very well. Now Halstead  
10 didn't care that the captain of the ship didn't speak  
11 English. He didn't care that the person directing all the  
12 medical care didn't speak English well enough to be  
13 introduced to him. He didn't care that the person  
14 supervising the medical care at the clinic didn't speak  
15 English well enough to be introduced to him. So what does he  
16 do when he finds out that the captain of the ship doesn't  
17 speak English very well? They check to see if the MD is  
18 signing the forms and that's it. And why? Because it's not  
19 important that the MD be able to speak with the patients  
20 about their care, about their problems or actually about  
21 anything. What is important is, is the MD signing the case  
22 study form because it's important in the Halstead system to  
23 paper the file so it looks like the MD is in charge.

24           During cross-examination Halstead told you I always  
25 talked about medical necessity. That's implied in



1 everything. Read the Burns' IOV's. The only time you see  
2 the words medical necessity is when they're preceded by two  
3 words and that is a letter of. That's when he talks about  
4 medical necessity, only when you're trying to justify it to  
5 the insurance company.

6 Let's turn to the Price/Burns/Halstead meeting in which  
7 she quits. February 4<sup>th</sup>. Halstead, at this point in time,  
8 knows from his discussions with Burns that Price is not with  
9 the program. She is not signing the case study forms. She  
10 is not ordering the tests that the chiropractors want ordered  
11 and by his own testimony, he has admitted that he knows that  
12 because Burns asked him to be there to quote "mediate" this  
13 meeting between Price about her not ordering all these tests.  
14 Okay. Now what's important about this is what was getting  
15 ready to happen at the Burns clinic.

16 If you will look at Exhibit 1-041, which is the Halstead  
17 last IOV dated -- magnify the date at the top for us,  
18 February 3 -- 4, which is the last meeting. We'll go to page  
19 5 and magnify number 7 please. This is important. Get  
20 weight loss program going as soon as possible. It is  
21 fantastic. They were getting ready to fire up a weight loss  
22 program at this clinic. Halstead was recommending it. They  
23 were getting ready to do it. It says working on it. Go  
24 ahead and remove that and bring up the lights.

25 Why is this important? Because the MD needed to be

1 onboard to order blood tests on every patient for this weight  
2 loss program and to order a urinalysis on every patient for  
3 this weight loss program. Okay. They needed her onboard.

4 A fair analysis of what was going on at this point was  
5 that Burns and Halstead were going to confront Price. They  
6 were either going to get her onboard with the program; she  
7 was going to start signing the case study forms and she was  
8 going to start ordering the tests, they're going to get rid  
9 of her. Okay. Price tells you, the meeting become very --  
10 became very tense. Halstead, on the other hand, says that  
11 Price sat mutely through this meeting. You have to  
12 determine, is that reasonable? You saw the -- you saw Doctor  
13 Price on the stand. Is she the kind of woman who's going to  
14 sit there mute through a meeting where people are asking her  
15 to do things that she thinks are wrong? You judge. You  
16 evaluate.

17 Price and Halstead planned to confront -- I mean -- I'm  
18 sorry, Burns and Halstead planned to confront Price about her  
19 not being with the program. Get her on the program or get  
20 rid of her and that sort of worked because she wouldn't go  
21 with the program so they got rid of her.

22 Can I have up 1-111, please? You've seen this before.  
23 This is the Price resignation letter. She has this meeting  
24 with Ron Halstead. She has this meeting with Burns. She  
25 writes a letter quitting. She complains that Burns and

1 Halstead asked her to certify as medically necessary tests  
2 that she didn't think were medically necessary. She  
3 complained that they were suggesting that they do an  
4 ultrasound of the neck on every patient prior to cervical  
5 manipulations. She said that was crazy, ludicrous. She  
6 thought it might -- it was insurance fraud. Same thing for  
7 the weekly urinalysis, to monitor a patient's long term  
8 intake. You heard Doctor Halstead testify, well, you know,  
9 you got to check to see the patient is really drinking the  
10 water. Do you think it's medically necessary to test a  
11 patient to see if they're drinking water, if they're going  
12 along with what you instructed them to drink? Is that a  
13 medically necessary test to bill an insurance company for, to  
14 see if your patient is lying to you? Asked to place orders  
15 and prescriptions on charts for tests I neither ordered nor  
16 deemed medically necessary. That's clearly fraud. That's  
17 what she told them. Does that sound like a woman who sits  
18 mute through a meeting? Go ahead and remove magnification.  
19 So their plan sort of worked. She did resign. What they  
20 miscalculated on was that she then went to the authorities.

21 Go ahead and call up 1-110 please. Price had it right.  
22 This was the four phases of care at Priority One. In a  
23 little while you're going to be asked to get it right. We're  
24 asking you to -- when you do -- after you've deliberated to  
25 return guilty verdicts against all defendants on Counts 1

1 through 15 and defendant Halstead guilty verdicts on Counts  
2 16 through 26.

3 I thank you for your attention and that ends my comments.

4 THE COURT: All right. Ladies and Gentlemen, at  
5 this time we'll recess for lunch and I would ask that you be  
6 prepared to return at ten till one. We'll start up in  
7 exactly an hour. During this recess please do not discuss  
8 the case among yourselves or with anyone with whom you may  
9 have contact. Please leave your notebooks face down on your  
10 chairs, together with the charge. Do not discuss the case  
11 with any third person or party who attempts to approach you  
12 to do that and report any contact to the Court Security  
13 Officer and, finally, avoid any media coverage of this case,  
14 should there be any, while you're out during the noon hour.  
15 Thank you for your attention this morning. We'll see you at  
16 ten till one.

17 (Jury out)

18 THE COURT: All right. Is there any reason why we  
19 can't recess right now for lunch?

20 MR. JAFFE: I just have a quick note. By my  
21 calculations Mr. Donley started at 10:24 and ended at ten of  
22 twelve, that would mean roughly one hour and twenty-six  
23 minutes he used.

24 THE COURT: I had it that he used one hour and  
25 twenty-five minutes, which leaves five minutes for rebuttal,

1 but I warned you. This Court stands in recess until ten till  
2 one.

3 (Recess at 11:50 a.m., until 12:55 p.m.)

4 THE COURT: During the noon hour I realized that I  
5 had misspoken this morning to the jury about the flow of the  
6 closing arguments. It will be Defendant Filcheck and  
7 Defendant -- I'm sorry Defendant Halstead and Defendant  
8 Filcheck, break, followed by Defendant Davis and rebuttal.  
9 All right.

10 MR. JAFFE: I'm sorry. Who's Davis?

11 THE COURT: That's -- Pardon me?

12 MR. JAFFE: Davis.

13 THE COURT: Did I say Davis? Defendant Taylor,  
14 excuse me.

15 MR. ADAMS: Your Honor, the Government understood  
16 when you told us in the charge conference you would give us  
17 the amount of time we'd ask for for closing that that was --  
18 our original request for an hour and a half in the opening  
19 portion and a half hour for the rebuttal portion and we were  
20 taken aback by your ruling this morning of only an hour and a  
21 half total.

22 THE COURT: I'm sorry. I had written down that you  
23 wanted an hour and a half total and that the defense counsel  
24 were forty-five and forty and forty.

25 MR. ADAMS: Well, that wasn't our understanding of

1 it.

2 THE COURT: I'll check on it during the break.

3 MR. ADAMS: Thank you, Your Honor.

4 THE COURT: Thank you. Bring the jury in.

5 (Jury in)

6 THE COURT: Thank you, Ladies and Gentlemen. Please  
7 be seated. We're ready to resume the closing argument. Mr.  
8 Jaffe.

9 MR. JAFFE: Thank you, Your Honor.

10 CLOSING ARGUMENT OF DEFENDANT HALSTEAD

11 MR. JAFFE: The Government's theory of the case is  
12 that Ron Halstead tells his clients to bring in patients who  
13 don't need care and then they give them whatever care they  
14 don't -- they don't need. That's the Government's theory.

15 Fortunately we have some facts in this case. Where are  
16 the facts? These facts are contained in the Government books  
17 that the Government has offered. These are the medical  
18 records of the patients who are treated in this case who form  
19 the basis of Counts 2 through 14 of the indictment. Here's  
20 the medical records right here. The Government's theory is  
21 all these patients had nothing wrong with them and got  
22 unnecessary treatment. Here are the books. Find in here one  
23 patient that didn't need treatment, one patient. Find in  
24 here one patient that didn't need treatment. You're going to  
25 look at the evidence and what you're going to find is the

1 people who came in in Counts 2 through 14 needed treatment.  
2 Why did they need treatment? They were in pain. They were  
3 in pain. They came to the clinic. They were in pain.  
4 You'll see all these treatment cards where they list their  
5 pain, ten, nine, eight, seven, six. Every single patient in  
6 Count 2 through 15 in this indictment had some issue. All  
7 right.

8 So step number one is, all that other stuff is nonsense.  
9 We've heard all this stuff about ten point exams and getting  
10 all these patients in that didn't need it, but the evidence  
11 in the case will show that every patient in Count -- in this  
12 indictment had a complaint, had a reason to come to treatment  
13 and got treatment. That's what the evidence is going to show  
14 in these books and I challenge you to find a single patient  
15 in the entire case that didn't need treatment.

16 Well, let's think about Muth. Muth, the first witness in  
17 this case. That's the craziest thing in this case. Here's  
18 the undercover operation for Muth. Guy walks in who's six  
19 five who says he rides a bicycle and is in good shape and  
20 needs to get worked out. All right. So they're going to  
21 sting the clinic and see if they're going to do something to  
22 him that's medically unnecessary. But here's the really  
23 nifty thing. He had something wrong with him. He had  
24 scoliosis. How do we know he had scoliosis? He had an x-  
25 ray. All right. Taylor explains to Muth, aka whatever his

1 name is, Whitten, that he had scoliosis. So what do they do?  
2 If there was no more testing in this case, all right, not the  
3 neurometer test, not the surface EMG, not the temperature  
4 gradient, the Government could say well, the x-ray is wrong  
5 but fortunately we have all kinds of testing here and what  
6 does the testing show? He has a problem. That's what the  
7 testing shows and, indeed, there was one mistake made. They  
8 tested the C-6 instead of C-7 and that showed there was no  
9 problem in that nerve because there was no problem in that  
10 nerve and that was a mistake.

11 So fortunately for everyone here we have a situation  
12 where you have someone who didn't understand that he had a  
13 problem because as you remember, Doctor Trent says sometimes  
14 you can have scoliosis and not even know about it. This guy  
15 had a problem; he was diagnosed with a problem. It was  
16 confirmed by three separate kinds of tests. He had received  
17 treatment and the Government says that the treatment was  
18 medically unnecessary.

19 What expert told you that the treatment for Muth was  
20 medically unnecessary? Do you remember anybody testifying  
21 from the Government about -- the Government talk to any  
22 scientific person to say that the treatment for Muth was  
23 medically unnecessary? Let's broaden that out a little bit.  
24 Do you remember anybody in this case, any expert going over  
25 the files and saying that the treatment for any of these



1 patients was medically unnecessary? How about a single  
2 patient? How about a single patient where the Government has  
3 proven that any of the tests given to any patient was  
4 medically unnecessary? Did they prove that? I don't think  
5 so.

6 So what this thing is on this point is that we have all  
7 this stuff about the scheme that Halstead devised to treat  
8 these patients who don't have conditions except these books  
9 show that every patient treated had some condition and needed  
10 help.

11 What else did it show? Well, I don't think the  
12 Government wants you to admit it -- understand this, but  
13 based on the notes of Price, it also establishes, miracle of  
14 miracle, some of the patients got better. As a matter of  
15 fact, all the patients felt better as a result of treatment.  
16 Well that's certainly not fraud but -- so how these patients  
17 getting treatment, they don't have a problem and their  
18 treatment's unnecessary but they're getting better. Why? Is  
19 it an accident that every single time these patients are  
20 treated they're getting better. Now all of them aren't  
21 getting completely better. I think Filcheck testified that  
22 some of these people, they got better in one area but not  
23 another area and certainly that's not his fault. But the  
24 point is -- I mean, let's talk about why we're here and why  
25 we're not here. All right.

1       We're not here because of patient complaints. Right? No  
2       one's coming in and saying they were harmed by the treatment.  
3       No one's coming in and saying there was malpractice, we're  
4       mistreated, we're under-treated. We weren't properly  
5       diagnosed. We're not here because of that. No one's here  
6       because of any allegation that a patient was harmed. Right?  
7       We're not here because people are saying the treatment's  
8       ineffective. Right? No one's saying that. The evidence  
9       shows it was effective.

10       Here's why we're here. Here's why we've all spent three  
11       weeks here in this case and that's because on some occasions  
12       the medical doctor didn't see the patient first and the first  
13       medical doctor they had was -- we're in the courtroom and we  
14       have certain rules of decorum so I can't tell you exactly  
15       what I think about any other issue but certainly many of you  
16       can infer some of my language.

17       We have a patient -- we have a doctor who, the first  
18       doctor, basically all he cared about was money and wasn't too  
19       interested in the patients.

20       The second doctor, Doctor Price, well she doesn't work  
21       now. She's not working as a medical doctor and I think the  
22       world is a better place for that.

23       You have two doctors who didn't care a great deal about  
24       their patients. They saw the patients, in the case of Price,  
25       over and over again but Price's view was she's only there to

1 clear chiropractic care, the first visit, the second visit,  
2 the third visit, the twelfth visit. She's only there to make  
3 sure that the chiropractor -- that the patient can get  
4 medical care. I don't think that's reasonable.

5 So what we're here today for three weeks is because the  
6 medical doctor didn't see the patient first and in some  
7 cases, supposedly, the medical doctor didn't sign off in the  
8 treatment or her signing off of the treatment wasn't, I don't  
9 know, wasn't with a full understanding of the medical  
10 treatment. That's why we're here. We're not here really  
11 about the medical care and, frankly, I don't think we're here  
12 about the medical necessity of the treatment because let me  
13 re-emphasize this point, no Government witness testified that  
14 there was any medical treatment given in this case that was  
15 not medically necessary. Nobody. No one in this case. All  
16 right. No Government witness.

17 What we have here and let's be -- let's be honest. I  
18 want to attack this directly. We have the statements of  
19 these two gentlemen, all right, who basically complained that  
20 they didn't feel the testing was ethical or was done too  
21 often or wasn't medically necessary. Well, one of the  
22 advantages of a trial is that we can bring evidence and one  
23 of the things we tried to do is bring evidence from experts,  
24 the experts who, in the case of a neurometer, the man who  
25 invented the neurometer and who has been talking all around

1 the world about the uses of it. We had him and I'm sure he  
2 made everyone here feel like an underachiever based on what  
3 he has done in his forty-eight years of life. He explained  
4 the need for the test. One of the issue points that he  
5 explained about was that sometimes you have to have -- you  
6 need a neurometer to test if you have nerve involvement.  
7 Right? How else do you know if you have nerve involvement  
8 and if you don't know that you have nerve involvement how do  
9 you present them with a treatment?

10 We had the temperature gradient guy here, Doctor Risley.  
11 Doctor Risley said that, in his opinion, in a perfect field  
12 you do every -- a test -- a temperature gradient test for  
13 every patient, every time. Why? To evaluate the patient's  
14 progress. One of the reasons you want to evaluate the  
15 patient's progress is so insurance companies can't cut the  
16 treatment by saying the patient isn't progressing. So on one  
17 hand, they don't like the testing. One of the reasons they  
18 like the testing is once you have testing and can show  
19 something -- someone's improving, you have it black and  
20 white. It's not based on some chart and a note where a  
21 patient says nine or ten or twelve or it's subjective.  
22 You've got the data right there in black and white and you  
23 can go to the insurance company and argue this patient is  
24 improving. They need the care. They need to continue. And  
25 that -- it seems to me, as Trent said, that's one of the --

1 probably the most fundamental important reason for doing  
2 testing. You have to document progress or no progress and if  
3 they're not progressing then you have to do something else.  
4 So I would submit that this whole concept of medically  
5 unnecessary testing is just all general stuff. It's  
6 theoretical to have it proving anything and in reality people  
7 do testing for a lot of reasons, not the least of which is to  
8 prove to insurance companies that -- to continue care and  
9 also what's called defensive medicine because sometimes if  
10 you don't do the testing and you miss something, the patient  
11 gets aggravated and sues you for malpractice, which I  
12 understand here they're having a crisis about.

13 So there are all kinds of reasons to do medical testing  
14 and again you have to think critically and you have to think  
15 precisely and in this case what you have to think about is  
16 who gave evidence in this case that any test given to any  
17 particular patient was not medically necessary. One  
18 particular patient. Nobody. There's nobody that's in this  
19 case and all this other stuff about the IOV's, that's just a  
20 smoke screen to hide the fact there is no evidence in this  
21 case about that.

22 Now -- so -- I noticed another interesting thing. Let me  
23 see if I can refresh your recollection. Does the name Bill  
24 Twigg mean anything to you? Bill Twigg is the most important  
25 witness in the case. How much did the Government talk about

1 Bill Twigg? Almost nothing. Why is that? Bill Twigg was  
2 the clinic office manager. He was really the heart of  
3 everything here. Bill Twigg knew everything and was involved  
4 in everything and everything that went on was focused on Bill  
5 Twigg telling people what to do because Burns wasn't here at  
6 the clinic.

7 Why didn't we hear twenty minutes about Bill Twigg?  
8 Well, it seems to me we didn't hear very much about Bill  
9 Twigg because if I had to summarize in two words why Ron  
10 Halstead isn't guilty I would say Bill Twigg. Why is that?  
11 Bill Twigg established that Ron Halstead did not know what  
12 was going on in the clinic. All right. Let's replay some  
13 testimony because I know it was a long time ago and hopefully  
14 some of you have notes. Bill Twigg established that Doctor  
15 Halstead advised the clinic that the medical doctor has to  
16 see the patient first in order to bill them. That's what  
17 Bill Twigg said. Bill Twigg also said that Burns knew this  
18 but decided not to do it. All right. So, therefore, you  
19 remember the Government's chart, I believe it was 290, where  
20 they talked about all the -- all the billings that was done  
21 before the medical doctor saw -- saw the patient, \$458,000 or  
22 something. So Bill Twigg basically established that  
23 Halstead's not responsible for that because they were acting  
24 against Halstead's advice so I suspect that's one reason they  
25 didn't mention that.

1 Twigg was really supposed to inculcate or establish  
2 Halstead's liability in this case because Twigg was the  
3 person who had the most direct contact with the clinic other  
4 than Doctor Burns and he's not here. I asked you to think  
5 about his testimony. Did Bill Twigg deliver to the  
6 Government? I don't think so. That's why they're not  
7 mentioning it. Here's the other most single important part  
8 of this. Bill Twigg established that Halstead didn't know  
9 that the medical doctor wasn't doing their job. All right.  
10 He established that he and Twigg every day would meet and  
11 discuss what treatment would be given to what patient.  
12 That's really the heart of the case here. Who decided what  
13 treatment and what testing was to be given to each patient.  
14 Bill Twigg established that it was Doctor Burns and him and,  
15 by the way, that was confirmed by every other witness in the  
16 case. Sergeant Finkenbinder testified to that, that it was  
17 his understanding that Bill Twigg would meet with Doctor  
18 Burns or over the phone and they would put sticky notes on  
19 these things, didn't matter if they had a case study or  
20 Rolodex or anything, he would decide with Doctor Burns every  
21 day what patient would get -- would be receiving what test.  
22 Finkenbinder testified to that. These two gentlemen  
23 testified to that. Halstead testified to that. Every  
24 witness in the case basically said the same thing. Bill  
25 Twigg and Doctor Burns decided what treatment to give these

1 patients. What does that mean? Well, what it really means  
2 is them getting a match. If Bill Twigg and Burns decided  
3 what treatment to give to what patient, then that cuts the  
4 causal chain. Halstead didn't do it and these two guys  
5 didn't do it. Didn't matter one bit what was written on  
6 these forms, these guys decided what to do. That's what Bill  
7 Twigg says and that's why you don't hear much about Bill  
8 Twigg.

9 The other thing is Doctor Halstead talked about his last  
10 conversation with Bill Twigg where Twigg finally admitted  
11 after the raid that Burns had been lying to him all along,  
12 that they hadn't been following any of the procedures he had  
13 set forth and let me ask you this. You don't have evidence  
14 in the record but I think it's not an unfair inference to  
15 infer from the fact that from that date on you don't have a  
16 single contact between Burns and Halstead. Do you think that  
17 was just an accident? Not a single form. Not a single IOV.  
18 Think it's fair to infer that once Halstead finally  
19 understood what was going on he would have no further contact  
20 with Burns or the clinic and that's exactly what happened and  
21 I submit that's not -- that's the opposite of criminal  
22 intent.

23 In order to find criminal intent here you have to have  
24 knowledge and a purposeful intent to effectuate the plan.  
25 Here we have just the opposite. Here what we have is



1 Halstead finds out about this in February and March of 1997,  
2 has no further contact with Burns, won't help him in any  
3 other fashion. That's it. There's no accomplice liability  
4 based on those facts. And that's Twigg. That's why you  
5 didn't hear much about Twigg.

6 Let me give you -- one of the most interesting parts of  
7 this case it seems to me is the different ways medical care  
8 is delivered. Let me give you two scenarios and see if I can  
9 try to understand it. You heard Doctor Filcheck talk about  
10 how he was trained in chiropractic college. What he was  
11 trained to do was tell the patient when he comes in, tell him  
12 look, you know, I'm a chiropractor. I deal with problems of  
13 the spine. I'm going to give you the most conservative care  
14 possible. I'm going to manipulate your spine and I'll take  
15 an x-ray or two to make sure, you know, that you don't have a  
16 broken back and I'm going to -- you know, let's treat you for  
17 a month or two and let's see what happens and if it doesn't  
18 work, if you don't get better then, you know, maybe I'll do a  
19 different kind of treatment and I'll just keep on treating  
20 you for three, four, five, or six months, if I can't help you  
21 maybe you can go to some other practitioner but the good  
22 thing is I haven't given you any tests, you know, other than  
23 the x-ray, haven't spent the insurance company's money and  
24 it's going to be conservative. It's going to take six months  
25 but this is the most conservative care you could get. All

1 right. That's one way of doing things and, by the way, I'm  
2 going to be treating you by a chiropractor and that means,  
3 you know, maybe your insurance company's going to pay for it,  
4 maybe it's not. I don't know because I don't even look at  
5 policies to determine whether they pay for it. That's one  
6 method.

7 Let me present to you another method. Chiropractor works  
8 on a multi-disciplinary committee -- clinic. They come in,  
9 they see the patient, the patient explains, well, I'm a  
10 chiropractor. My skills and license are very limited. The  
11 only thing I can tell you is whether you have a spinal  
12 problem and particular whether you have a subluxation that's  
13 causing some problems. The chiropractor further explains,  
14 look, I've got to tell you, because of my training I can't  
15 really talk to you about medical conditions and the fact is  
16 often times people that have back problems, the problems are  
17 caused by something else then just a subluxation. Maybe  
18 that's the problem many people feel about chiropractors,  
19 they're not honest enough about this.

20 So maybe the back pain you have that radiates here or  
21 radiates there, maybe it's because of subluxation but maybe  
22 it's because of something else and the problem is I'm not the  
23 guy to tell you that it's something else 'cause I don't know  
24 anything about internal medicine and diseases so what we have  
25 here, we have a situation where there's a medical doctor on

1 staff and the medical doctor is also going to be involved in  
2 your care. And why is he going to do that? For a lot of  
3 reasons. Right? One of the reasons is to make sure that as  
4 I'm treating you for subluxation you're not dying of cancer,  
5 that you don't have diabetes, that you don't have a hundred  
6 other conditions that might be causing the problem. The only  
7 thing I'm going to be doing is treating this vertebral  
8 subluxation of the spine and hope that things get better. So  
9 we're going to have a medical doctor here and she's going to  
10 also oversee just to make sure that things are going well and  
11 to act as a guide -- a guidance to me because she has a  
12 broader scope of license, because while she might not know as  
13 much about the back as I do, she knows a great deal more  
14 about internal disorders, some of which could cause your  
15 problems. And here's the other thing we're going to do.  
16 We're going to give you a whole battery of tests throughout  
17 the period of your treatment. The first thing we need to do  
18 is determine whether your problem is a muscular problem.  
19 Remember some people come in, they don't just hurt their  
20 back, you know, swinging a tennis racket, they got pain over  
21 time. We have to determine whether you have a muscular  
22 problem, you have a nerve problem, a medical problem. One  
23 way to do that is through a neurometer test. Now I know you  
24 might not feel there's anything wrong with your nerves but  
25 the funny thing about nerves are, according to Doctor Katims,

1 sometimes you don't even feel when you have a problem. The  
2 loss of sensation is not obvious to a person so we're going  
3 to test you in the beginning to make sure that your nerves  
4 are functioning and depend -- if your nerves are functioning,  
5 you'll get one test -- one type treatment and if they're not,  
6 you'll get another kind of treatment.

7 And then we're also going to do these temperature  
8 gradient tests. Now we're not going to do them every single  
9 time the way Doctor Risley said but we're going to do them  
10 pretty frequently just to make sure you're responding to  
11 treatment.

12 The third thing we're going to do is a diagnostic  
13 ultrasound because you know what, you could have a herniated  
14 disc and an x-ray can't -- can't pick that up so we have to  
15 rule out -- you remember Doctor Kaliakin talked about the  
16 concept of ruling out, probably the most important concept in  
17 medicine. You have to rule out a very serious condition even  
18 if you think that what the patient has is not that -- I don't  
19 want to say not, but a lesser condition, like a subluxation,  
20 the important thing in medicine is to rule out something bad  
21 so while you're getting treatment for subluxation you're not  
22 dying of something else or have some horrible condition that  
23 could have been stopped at the beginning. So what we're  
24 going to do is give you all these tests to rule out that you  
25 have a more serious condition and also to monitor, as I said,

1 to make sure that you're improving and if the insurance  
2 company is going to complain about that we can show them in  
3 black and white that you're improving.

4 And the other thing we're going to tell you now is while  
5 we were talking to you is we have verified that you have  
6 insurance for all this under this plan and you'll only have  
7 to pay a co-pay. Now some of you might feel -- all of you  
8 probably have health insurance. All of you may have it  
9 through an employer. Some of you may be paying for it out of  
10 your own pocket. It might be a benefit. It's probably  
11 taxable. Some of you might feel you wanted the first  
12 approach. Right. You want to save the insurance company's  
13 money and for you maybe you can wait six months. Maybe what  
14 I'd do I certainly wouldn't do for my -- wouldn't do for  
15 children but for you, you might make that decision. For  
16 somebody else in your family, I can't think of too many  
17 people who'd go in that group if they had a choice and if  
18 they knew about it.

19 Okay. So we have this latter choice. Here's what gets  
20 interesting. For a hundred years -- we've talked a little  
21 bit about the history of chiropractic and that was really for  
22 a reason. For almost a hundred years the former approach is  
23 the way they've been doing it. They've been doing it for a  
24 lot of reasons, not the least of which was because medical  
25 doctors wouldn't work with them. As we learned from Trenton

1 -- learned from Trent, in the late '70's and early '80's  
2 doctors were not allowed to do that and now, finally we're  
3 getting to the point that medical doctors work with  
4 chiropractors sometime. A lot of medical doctors don't  
5 believe the chiropractic issue; they think it's just hokum.  
6 They think it's limited and as a result it's very important  
7 to find a medical doctor who at least believes in the  
8 chiropractic work and that probably explains all these notes  
9 about a compliant doctor. You have to have a medical doctor  
10 that at least believes in chiropractic that's willing to, as  
11 an integrated part of care prescribed, otherwise you're  
12 wasting your time.

13 So we have these two approaches. Let me suggest to you  
14 that science and medicine evolves over time and what we're  
15 really doing -- this may be meaningful to some of you, it may  
16 not be. What we're really doing is we're focusing here on a  
17 transition front. I would suggest that the chiropractic  
18 model of a hundred years ago up until now is not going to be  
19 around another fifty or a hundred years because it's not  
20 necessary because spinal care is just one part of broader  
21 care and the idea of just going to a chiropractor and not  
22 knowing whether you have other things wrong and waiting time  
23 when you have all this diagnostic equipment that's come about  
24 in the last ten or fifteen years, people are doing it and  
25 these guys are still going to do it but that's not the

1 future. That's kind of the past. All right. So -- and  
2 that's one thing Halstead does. Halstead brings this new  
3 technology to people and says here, it's there, use it.

4 Now am I still -- I'm not going to -- people aren't going  
5 to expect -- you guys aren't going to expect me to come and  
6 say Ron Halstead is Albert Swietzer, that he's doing this out  
7 of the -- only out of the greater good of mankind.

8 Obviously, a reason -- a main reason for all this is you get  
9 paid for it. There's no question about that. But it also  
10 happens to be beneficial and it also happens to improve  
11 patient care and that's what Glenn Trent said, that you do  
12 these tests in order to improve patient care and as a side  
13 benefit -- and as a big side benefit, you also get paid from  
14 it. There's nothing illegal about it and I think that's one  
15 of the fundamental points in this case. There's nothing  
16 illegal about advising a client or a doctor to do more  
17 testing as long as it's medically necessary.

18 Let's talk about this medical necessity for a little bit.  
19 How many times does someone like Halstead have to say the  
20 test is medically necessary. In this case he did fifty, a  
21 hundred. Would five hundred have been any better? Filcheck  
22 and Taylor -- or at least Filcheck said that he understood  
23 from taking his notes that tests have to be medically  
24 necessary but he doesn't need Ron Halstead to tell him that.  
25 He doesn't need Ron Halstead to give him any of this

1 education about how to treat patients. What the clinic needs  
2 Ron Halstead to tell them is what testing is available and  
3 how to use it. That's his job. And let me make no bones  
4 about it, his job is to tell his clients how to make more  
5 money. That's why he gets paid. That's why people bring him  
6 on board. That is his job. If some of you don't like it,  
7 I'm sorry, but I'm not going to back away from it. That's  
8 his job. It's not illegal to do that.

9 I heard testimony that Halstead has two or three hundred  
10 clients, has done twenty-five hundred IOV's. There's fifteen  
11 -- fourteen, fifteen hundred of these clinics throughout the  
12 country and a couple hours like he was going to meet with the  
13 medical doctor and the chiropractors are going to sit around  
14 and discuss what treatment and therapy the patients are going  
15 to get for the next day. That conversation has been repeated  
16 in the morning in hundreds of other cases of Doctor  
17 Halstead's clients and even Barry Markson's clients. I mean  
18 they're all going to do the same thing. The morning huddle,  
19 the weekly meeting, the weekly conference, whatever you call  
20 it. The idea is doctors -- medical doctors and chiropractors  
21 get together and they discuss patient care. There's nothing  
22 illegal about that. There's just nothing illegal about that.  
23 If anything, as I've tried to suggest to you, that's the  
24 future of health care; that's not the past. That's what they  
25 ought to be doing for the benefit of patients, not have you



1 have to take the -- the risk and just choose between whether  
2 you're going to have someone look at your back and see if you  
3 have some back problem or have a bunch of people look at your  
4 back and see what's causing it. All right. That's not  
5 illegal and I don't even think the Government is going to  
6 suggest that that's illegal. So I think that's an important  
7 point.

8 I want to just make a couple points about just some of  
9 these general things that come up, the case study plan. God  
10 knows you don't want to hear about verticals any more. The  
11 bottom line is it's an estimated treatment plan. Medicare  
12 requires it, you know. Let me give just an aside. Just  
13 because someone raises their voice and has an accusatory tone  
14 it doesn't mean it's wrong. I could say here, do you mean  
15 that this carpet is red? Is that what you're coming here and  
16 telling the jury? This carpet is red. I can raise my voice  
17 and I can have an accusatory tone. It doesn't mean it's  
18 wrong.

19 Case in point. The case study method. Halstead calls it  
20 the case study and Medicare calls it a treatment plan.  
21 What's that phrase? You call potatoes, I call potatoes, it's  
22 the same thing. Medicare requires the doctor to have a case  
23 study or a treatment plan before they initiate care. You  
24 have to say what you're going to do to the patient, what you  
25 -- how long you expect to take and what testing you have to

1 do. That's not Ron Halstead saying that. Medicare requires  
2 that.

3 We even had this exhibit. I remember one of these  
4 exhibits from this company they asked Taylor about, where  
5 they asked him some information and among the information,  
6 despite what the insurance company says, is what's your  
7 treatment plan. Okay. Guess what? Insurance companies want  
8 to have treatment plans. Why do they want to do that?  
9 Because they want to make sure that you know what you're  
10 doing. They want to make sure that you -- that you thought  
11 about what this patient problem is, what do you expect to  
12 happen and how are you going to get there. All right. So  
13 this whole concept of this case study plan is just nonsense.  
14 It's -- Government requires, it's all good medicine. The  
15 SOAP notes is really a case study plan. S-O-A-P. The P is  
16 plan. Plan. You have to say what you plan on the patient.

17 The idea that someone who suggests a course of treatment  
18 for a patient -- the idea that that is wrong and criminal is  
19 just ludicrous. I mean it just makes no sense at all.

20 These protocols that Halstead's talking about, we kind of  
21 skipped over the fact -- we talked about some names, McQueen,  
22 and all that. They're not just protocols. These are  
23 protocols taught in chiropractic colleges recently and what  
24 Halstead does, he comes in and says these are the protocols  
25 that they're teaching. Are they to be done in imitation? Of

1 course not. But these are the basic guidelines by which you  
2 evaluate treatment. All right. Halstead -- we admit, he  
3 does it. That's not good/bad, that's good. You're supposed  
4 to do that.

5 You know, we have this other concept here which has been  
6 just bandied about. Patient comes in, you look at him and  
7 you start with a clean slate without any reference to any of  
8 your past experience. Medicine is ultimately -- a detective  
9 match or game; talked about ruling out. When you think about  
10 it, medicine is really what's called pattern recognition.  
11 You have to recognize a pattern of symptoms, a constellation  
12 of symptoms and try to figure out based on your past  
13 experience and what's been written, how to treat the patient.  
14 That's not a bad thing. That's a good thing. No doctor just  
15 comes in and starts with his blind slate and says what do I  
16 do for the patient. He talks about -- people have been  
17 treating back pain for a hundred, two hundred, five hundred  
18 years. We know certain things. We know, and I think it's  
19 been testified, that someone with whiplash is going to take  
20 roughly thirty-six visits. Some might take fifteen. Some  
21 might take forty. It's not fraud to suggest that your course  
22 of care is going to be thirty-six visits. We know from  
23 history, we know from the documented publications that's  
24 roughly what it's going to be. All right. There's nothing  
25 wrong with that. That's not fraud. That's just pattern

1 recognition and based on what's going on here.

2 Now, what I'd like to do briefly is go back to the point  
3 that we talked about before about the evidence in the case.  
4 You know, sometimes a lawyer's job, for better or worse, is  
5 to be very, very precise and split hairs. You have to be  
6 accurate and have to be precise. That's my job and I would  
7 submit to you, people, that's now your job. This is a  
8 criminal case with criminal responsibility so I think you all  
9 have to be as precise as all of us lawyers put together and  
10 then more so before you impose criminal liability. In that  
11 end let's look at the individual substantive counts in the  
12 indictment. All right. Let's just take a look at it and  
13 let's see what precision gets us.

14 Count Number 2, and this is the jury verdict form that  
15 you all are going to get and have to fill out. Now Count  
16 Number 2 says that this patient, P.B., got a service 76536, a  
17 guideline for diagnostic ultrasound on 7/13/96. That's all  
18 Count 2 talks about. One patient got one test on one day.  
19 Okay. Let's put on our thinking caps and think about your  
20 notes. What witness said that this test given to this  
21 patient on this day was not medically necessary? What  
22 witness? Muth? Finkenbinder? None of these guys. Price?  
23 She didn't say that. Nobody in this whole trial said that  
24 this service for this patient was not medically necessary.  
25 Who said in this trial that this service was not given in

1 accordance to -- or in accordance with the CPT Codes?

2 Anybody remember any evidence about that? Nobody said that  
3 this service was not given in accordance with the CPT Code.

4 Let's go to the final point and here is the biggest just  
5 misconception illogical mistake in the whole case. Service  
6 had been provided by a specified medical doctor. All right?  
7 We need to focus very, very carefully. Here's the point. On  
8 the HCFA-1500 form they never ask you who did the service.  
9 You're going to have hundreds of HCFA-1500 forms. Study  
10 them. Ask yourself where on the form does it ask you who  
11 touched the patient. Nowhere. It doesn't exist. Maybe  
12 they've done how many hundreds of millions of HCFA-1500  
13 forms, printed in the last twenty years. Do you think if all  
14 these geniuses in the insurance company would have wanted to  
15 know or felt it was important to know who touched the  
16 patient, do you think maybe they could have asked that in a  
17 direct way? They don't ask that. What they ask, and I'm  
18 going to say to you people but I'm afraid that some of you  
19 will try to shoot me if I put on even more of this stuff on  
20 the screen. The HCFA-1500 form, the box 31, all it says is  
21 who is the medical -- the medical doctor signing this attests  
22 to the things on the back of the form. It doesn't ask, and  
23 nowhere in the form does it say who did the service. Do you  
24 know why? I'll tell you why. It's irrelevant. It doesn't  
25 matter who does the service. What matters is who's

1 overseeing the service and you -- remember you had Ronald  
2 Halstead talk about the flip side of the form. We're not  
3 going to go over that now. What the form says is the service  
4 was provided by either a medical doctor or an employee. All  
5 these guys are employees, all right. It doesn't matter who  
6 touches a person and why it doesn't matter is this concept of  
7 incident to.

8 We talked about incident to in opening. Some of the  
9 witnesses talked about it. Even Agent Finkenbinder talked  
10 about incident to. He knew what incident to was. What's  
11 interesting is none of the insurance people, other than the  
12 Medicare person, knew what incident to was. I find that  
13 staggering. Someone who worked in the field for twenty years  
14 and not even know what the incident to rules are. Is it any  
15 wonder that sometimes some of us get our insurance claims  
16 messed up or they don't pay. If they don't even know there  
17 own rules how do you expect to get paid? One of these people  
18 -- one of these ladies even said specifically that to bill  
19 for the service for a doctor, he has to touch the patient.  
20 He is the person giving injection and taking the temperature.  
21 You all know that's not true. You don't need any evidence in  
22 this case to know that. You've all been to a doctor. You  
23 know that when you go to the doctor for a physical exam, the  
24 doc might only see you for the last five minutes and every --  
25 all the other workup is done by some nurse practitioner or

1 physician's assistant and it's still all billed under the  
2 doctor's name. So you implicitly know the concept of  
3 incident to. Now -- so you know that's not right.

4 So here's the point. In this case, question, be  
5 technical, that's my advice to you. Be very, very technical.  
6 This is a criminal case, criminal responsibility. The  
7 Government has to prove their case beyond a reasonable doubt.  
8 What did they prove? Did they prove, and does it matter,  
9 whether Doctor Medina or Doctor Price rendered the service?  
10 So my point is, they're asking you something here that really  
11 doesn't matter. It doesn't matter who gave the service under  
12 the incident to rules.

13 So on the three precise questions that you're going to be  
14 asked, right, as a predicate, as a prerequisite to determine  
15 whether they're guilty or innocent there's been no evidence  
16 that the service was not medically necessary for this  
17 patient. There's been no evidence that the services were not  
18 performed in accordance with the CPT Code and it doesn't  
19 matter who gave the service because of incident to.

20 Another example, Count 3. Same thing. Temperature  
21 gradient was given that day and the range of motion was given  
22 that day. Who testified that this test was not medically  
23 necessary? Who? Taylor and Filcheck didn't. They just  
24 complained generally about tests. Finkenbinder? Price? She  
25 didn't say that. No one testified in this case that these

1 services were not -- that this particular service was not  
2 medically necessary; therefore, you can't check that box. No  
3 one testified that the service was not performed in  
4 accordance with the CPT Code and it doesn't matter who did  
5 the service. All right.

6 So on this count I would suggest even before we get into  
7 this issue of whether someone assisted or knew or acted as an  
8 accomplice, you can't find criminal liability here because  
9 they haven't met this burden. You go through every single  
10 claim form it's the same thing. Think about what witness  
11 testified about this detailed office visit. Who said that  
12 this visit, 99214, detailed office visit and a focused office  
13 visit, wasn't proper? Anybody say anything about that? Any  
14 of you recall anything? Nothing. There's no evidence in  
15 this case about that and -- on this count as well.

16 Now, same thing, every single count, limited office  
17 visit, other than limited office visit will have a CPT Code  
18 but that doesn't require a medical doctor at all. Matter of  
19 fact it says you don't need a medical doctor for that.

20 So every single count is the same thing. Every single  
21 count. There's no evidence. We have all this big stuff.  
22 Broad. Broad. But what we have is irrelevant. What we just  
23 -- what we lack here is evidence of the specifics. Who did  
24 what to whom. Thank you. I don't need that any more.

25 Now, so my advice and plea to you is because this is a



1 criminal case be very, very technical and very precise.  
2 That's what you have to do here. On the merits, there's just  
3 no basis.

4 I want to talk a little bit about witnesses. I agree  
5 with Mr. Donley and I'll go a step further. Sometimes people  
6 lie. They come up here and they don't tell the truth and  
7 you're going to have to make some credibility determinations.  
8 One of the credibility determinations you're going to have to  
9 make is about Markson. I'm not going to go over this  
10 extensively because I think you'll have -- I think you all  
11 know what's going on with Markson. He's very competitive.  
12 He stole Doctor Halstead's forms, started teaching the same  
13 thing he was doing and needless to say he's somewhat  
14 disgruntled and will benefit greatly if Doctor Halstead is no  
15 longer in circulation. There's also the little matter of the  
16 fact that he's -- he's -- he's nuts, okay. I think I can go  
17 that far. He's nuts. I mean, this guy comes up, says one  
18 thing, denies something. There's a big conspiracy about him.  
19 It's unfortunate he has some mental problems. I think it  
20 speaks volumes that they brought in a witness like that in  
21 the Government's case and that's what they think about this  
22 case if Barry Markson is their star and final witness and I  
23 just don't think I have to say anything more about that.

24 Price. Another important witness in some respects and  
25 some respects not. The evidence in the case from Price is

1 that she avoided Halstead. Not Halstead's fault. She heard  
2 that Halstead is a jerk. Now maybe he is, maybe he isn't,  
3 who knows, but based on what she heard she just avoided him.  
4 The only evidence in the case that she adduces is that -- is  
5 that they had this meeting.

6 Now what do we know about Price? Well, I thought she  
7 said on direct that Halstead ran the clinic, he was the  
8 clinic's director, because things changed after that. I was  
9 planning on planning the cross-examination on this point when  
10 she brought out the knife, said she never said that. I  
11 wonder if any of you have those notes where she said that  
12 Halstead was the clinic director. That's what I have.

13 Her basic view is she was just there to refer patients  
14 for chiropractic treatment. Do you believe that? Is that  
15 logical considering that she saw these patients over and over  
16 and over again? Let me tell you the craziest thing here.  
17 She worked with this clinic for fourteen months, three days a  
18 week, five days a week, twenty hours a week. Most days she  
19 was there. Her office, you remember we talked about the  
20 chart, right next to the therapeutic testing room -- the  
21 testing room, one door down away from billing. Now with  
22 their view she knew nothing about the fact that all these  
23 bills were being sent out in her name. Nothing. She knew  
24 nothing. Is that fair? For fourteen months? Let me ask.  
25 Let's say she's telling the truth. If you're -- in the logic

1 of the Government's position, she's there every day, every  
2 other day, twenty, thirty hours a week, she knows nothing.  
3 Halstead, who's there eleven days over three and a half  
4 years, he's not there for a year, knows everything. How does  
5 that make sense? In my view that's not consistent. If she  
6 didn't know, how could the consultant know who's there eleven  
7 and a half days, when we already know that Twigg and Burns  
8 are hiding things from Halstead. So, in my view, Price's  
9 asserted lack of knowledge is directly exculpatory. It means  
10 that there's no way in the world he could have known what was  
11 going on. So she lied or mislead on any number of points.

12 One of the few exhibits we got into evidence is her new  
13 resume. I didn't have a chance to point that out. She  
14 worked from December 14<sup>th</sup> to January 5<sup>th</sup>. On her resume you'll  
15 see that she worked 1995, 1996 and 1997 at Priority One.  
16 That's an interesting use of the years, the date. You have  
17 to make a determination of that. In my view, Price is not  
18 telling the truth. What she was trying to do with her letter  
19 and everything else is really just to cover herself and make  
20 it look like she wasn't -- didn't know and wasn't involved in  
21 that and, of course, if she knew and was involved in all this  
22 stuff then there was no fraud because a medical doctor was  
23 involved so she had -- she had to take that position and I  
24 think she did.

25 Knoderer. I'm not going to say much about Knoderer.

1 It's pretty clear he was pressured into pleading guilty  
2 because of his wife and father. It's -- I have to say I  
3 don't believe these gentlemen were any way involved in that.  
4 He also testified that he didn't know about the upcoding that  
5 his doctors were doing and certainly Halstead couldn't have  
6 known. We didn't get much into this thing about billing for  
7 diagnostic codes that should have been chiropractic codes.  
8 The only thing is you have the CPT Code book. There was no  
9 chiropractic code in 1997 or 6 or 5 or 4, so whatever he did  
10 plead guilty to, it just didn't exist back then. Because  
11 this isn't a case about Knoderer we didn't get into that. I  
12 didn't do much on cross-examination on him because he's in a  
13 difficult position. His wife and his father are still at  
14 risk and I just figure you'll get the picture with him and  
15 won't need much help.

16 The other thing I'd like to talk about is money  
17 laundering. I'd like to talk about that because the only  
18 time we talked about that is a little bit in the opening and  
19 closing. There's been no evidence about money laundering.  
20 No one testified about money laundering. Nothing. We only  
21 have it in the statements.

22 Now, what do we know? The money laundering supposedly  
23 has to do with the formation of these corporations. By the  
24 way, the corporation was formed by a New York lawyer, passed  
25 on by a West Virginia law firm and the documents were

1 submitted. Extensive discussions, according to Wilson, about  
2 -- between the lawyers. Wilson stated if he had thought  
3 anything was wrong or illegal he wouldn't have participated  
4 with any of this stuff. I believe him. I think that's  
5 right.

6 So where's the money laundering? Halstead wasn't  
7 involved in the formation of the corporation. All this stuff  
8 about the management company is not illegal. In different  
9 states you achieve in different ways. It's not illegal to  
10 have a matching company. It's not illegal even to take the  
11 money out of the matching company. In this state, read your  
12 notes, the doctors don't make all the money. They get  
13 salaries. It's the company that makes the money. Right?  
14 There's nothing wrong with having someone other than the  
15 medical doctor make the money and having the medical doctor  
16 being an employee and the structure is really irrelevant.

17 I don't know much more to say about this money laundering  
18 because there's no evidence of it. The only evidence is that  
19 Ron Halstead got paid. He got a three thousand dollar check.  
20 Well, okay. John Wilson got paid. Borsody got paid. These  
21 people got paid. Price got paid. Everyone got paid. So the  
22 big evidence in this case about money laundering for my  
23 client is that he got a three thousand dollar check and in  
24 fairness, he got a hundred and fifty thousand dollars over  
25 three years, which included equipment, some of which he put

1 back and he got consultant fees and he got his travel -- his  
2 travel expenses paid. That's the evidence of money  
3 laundering.

4 Where's the money laundering? You guys know what money  
5 laundering is. It's -- it's money laundering. Where -- what  
6 have we heard about that? There's nothing in this case about  
7 money laundering and the fact that we're only hearing about  
8 all this stuff now in closing is just ridiculous. If they  
9 had a money laundering case and it was specific to Halstead,  
10 you would have heard it. You heard nothing about it. That  
11 charge is just completely nonsense.

12 Now I'm not going to go through all these IOV's again.  
13 We had enough about that. You'll recall from Twigg, it was  
14 Halstead. They -- the Government sort of thinks it's their  
15 IOV's and we sort of think that IOV's that said to do less  
16 testing, do less testing. You've heard all that stuff. Take  
17 a look at the IOV's. You know, I think -- there's all kinds  
18 of good things in there. There's bad things in there. Even  
19 crazy Barry Markson, when I tried to ask him about the IOV's,  
20 said well, you're taking it out of context.

21 You know, people say things for a variety of reasons.  
22 You heard this one thing about the red flag. Well, the red  
23 flag for this doctor was that he was switching, every --  
24 every patient. One bill was under chiropractic. The other  
25 bill was under the medical doctor. Back and back. And

1 Halstead testified about that. That's not wrong. So you  
2 take a consistent position. If you're going to take the  
3 position that the medical doctor's treating patients, bill  
4 under them. If you're going to take the position that the  
5 chiro is the -- doctor is treating, take that position. Just  
6 don't keep on flip-flopping.

7 So what you have to understand, and I think you already  
8 do, that in the context of business advice, people give  
9 business advice and the IOV is just a ten word compilation of  
10 a half hour discussion about a complicated business form and  
11 that's all it is. You can read them. You can take them out  
12 of context. You can infer anything you want out of anything  
13 but that doesn't make it illegal.

14 Let me -- let me close, you may be happy to hear. Let me  
15 close by what I think is the scariest part of this whole case  
16 from my perspective and maybe a little bit scary for you.  
17 Here's the deal here. Halstead's a consultant. He comes in  
18 a few times over a course of eleven months. It's a hundred  
19 percent clear that Burns didn't follow his advice. There's  
20 no doubt about it. The Government's star witness established  
21 that. Time and time again Halstead tells these guys what to  
22 do and Burns and Twigg decide not to do it because Burns  
23 wants to make more money. He makes the more money, he puts  
24 it in his pocket. That's what happened in this clinic over  
25 and over and over again.

1 Halstead, despite what Price says, and despite what the  
2 Government says, has no control. He can't control the hiring  
3 and firing. He's not there. He doesn't know what's going  
4 on. He has no blessed control over what Burns does and yet  
5 the Government is attempting to seek criminal sanctions  
6 against him because of general advice he gives to clients.  
7 They're trying to impose criminal sanctions in a case where  
8 the defendant can not control the actions of the individual  
9 who's committing all these offenses, whatever they are and  
10 one of the reasons we have juries, the main reason we have  
11 juries, is so that you can apply the law and reflect the  
12 values of the community and it seems to me one of the basic  
13 values of the community is you do not impose criminal  
14 liability on someone who has no control and can not affect a  
15 course of action, even if that course of action is right,  
16 wrong, criminal, fraudulent or whatever. Somewhere along the  
17 line criminal responsibility has to come down to someone who  
18 can influence and control the situation and if it can't, it's  
19 not fair to impose criminal liability. We're not talking  
20 about repaying money here; we're talking about criminal  
21 liability.

22 And I would suggest that based on all the facts in this  
23 case it's just not fair to impose criminal liability on a guy  
24 who comes in, sells a bunch of forms, gives general business  
25 advice to make more money, and doesn't know and can't control



1 anything.

2 That's all I got to say. Please think carefully about  
3 the case. Be critical. Forms do matter and be very, very  
4 technical. The law demands nothing less.

5 Thank you and thank you, Judge Keeley.

6 THE COURT: All right. Mr. Zimarowski.

7 MR. ZIMAROWSKI: With the Court's permission, I'm  
8 going to use that podium.

9 THE COURT: Thank you.

10 CLOSING ARGUMENT OF DEFENDANT FILCHECK

11 MR. ZIMAROWSKI: All right. Well, two things.

12 First off, I'm not going to turn out the lights. I'm not  
13 going to talk as fast as Mr. Jaffe. Not that I can't. I  
14 think I could talk just as fast as he could. In fact I could  
15 probably talk as fast as Mr. Adams as well but somehow I  
16 think that the sixty miles an hour speed you kind of lose  
17 lots of stuff. Just like I did in opening statements, after  
18 following Mr. Adams and Mr. Jaffe, I needed to tone down the  
19 scale there. I think I'm going to scale it down here as  
20 well.

21 First of all, Mr. Donley thanked you and I want to thank  
22 you along with something else. I want to apologize to you.  
23 Sometimes, maybe these lawyers are better than I am.  
24 Sometimes I open mouth and insert both feet and if I've said  
25 something to offend someone accidentally then I apologize and

1 what calls me back is when Father Doug was on the stand. I  
2 stumbled, inserted both feet, both hands and fell on the  
3 floor basically and some people thought it was amusing.  
4 There's two people in the courtroom who did not think it was  
5 amusing. I was one; Father Doug was the other. I apologized  
6 to him afterwards and I apologize if anyone on the jury took  
7 offense at that, my stumbling around and my inarticulate  
8 stumbling in that response and there's probably been a couple  
9 other occasions. I can think of one other one you weren't  
10 privy to but -- that I stumbled on as well. So if I have  
11 said something inappropriate or offensive, I apologize.

12 You recall that in my opening remarks -- when I do an  
13 opening statement, I try to give the jury a view of what is  
14 going to happen in the beginning, what's going to happen in  
15 the middle and what's going to happen at the end and if you  
16 recall my opening statement I told you -- I tried to give you  
17 a structure, an analytical structure and I said there were  
18 certain issues to be aware of and one of the major issues was  
19 there was multiple defendants. There's multiple cases going  
20 on here. There's the US vs. Halstead. By the way, that's  
21 something else. Mr. Donley and Mr. Adams represent the  
22 United States but they're representing the United States  
23 Government. I would suggest to you that you represent the  
24 United States too. So does the Judge, so does all the  
25 taxpayers. We all represent the laws of the United States.

1 And with that said, don't place too much credence because I'm  
2 from the United States. You all represent the law in this  
3 case. You are the judges, as the Judge said, the judge of  
4 the facts.

5 But there are issues, US vs. Halstead is one case.  
6 United States vs. the Clinic, meaning Burns, Twigg, Medina  
7 and I think if you were sitting on a jury and you have the  
8 case in front of you and the jury verdict forms for the case  
9 of United States versus Robert Burns and the Clinic you might  
10 have a different view. There's different evidence. Those  
11 are different cases. You also have the case United States  
12 versus Bill Filcheck. United States versus Scott Taylor and  
13 as the Judge told you in the Charge for the case and I told  
14 you in opening statement, each case must be viewed  
15 independently and separate and recall a comment I made in  
16 opening statement. I said one of the issues in this case was  
17 who is "they"? Put they in quotes. I said that. I think I  
18 was very perceptive on that and they is an important issue  
19 because the they in this case goes to the heart of the  
20 Government's case. We have evidence coming in, who is the  
21 they? Who's the they that the evidence applies to? Does it  
22 apply to United States versus Halstead? United States versus  
23 Burns or the Clinic? Or United States versus Taylor or  
24 Filcheck? So the they is important.

25 I also said there's going to be a lot of blending of the

1 issues. They try to scoop everything up and push it all  
2 forward as one. They blend issues, blend responsibility,  
3 blend accountability. And I also identified you distinguish  
4 between the unprofessional and the unethical versus the  
5 illegal.

6 Also opening statement and periods of references to this,  
7 I said that the beauty of a jury is that you bring with you  
8 different types of lenses on how to view things and lenses  
9 from the legal standard. Jurors and witnesses all view  
10 things from their own personal perspective, sometimes an  
11 analytical perspective, sometimes an emotional perspective.  
12 What's the beauty of a jury system is that you blend it all  
13 together, to use a term, and you come up with what I think is  
14 a just -- a justice and conclusion.

15 So the lens of your analytical basis is important. When  
16 you draw those inferences, draw from your own basis, your own  
17 lens, how you view things. I tend to view things rather than  
18 analytical, rather structurally, which is why Mr. Jaffe  
19 jumped into a whole lot of facts. Mr. Donley did jump in the  
20 facts but he was a different structure but I tend to think  
21 that structure is important. It's all part of my lens in my  
22 back. I do things as an engineer and as military. That's  
23 directly how everything is viewed by me, everything is  
24 analytical, step by step by step, logical organization. You  
25 get to the top beginning from the bottom. I cited you some

1 Arthur Conan Doyle Sherlock Holmes and those are the kind of  
2 deductive and inductive reasoning approaches that I think are  
3 useful and important.

4 We have, in this case, a jury charge. You have a copy of  
5 it. I think everyone has a copy of it. The Judge read it to  
6 you and you read along and you recall that I said in opening  
7 statements that criminal law is structured, it's analytical.  
8 It has two general components. It has mental state  
9 components and overt act components and there's no such  
10 thing, by the way, as common law crimes. Every criminal law  
11 is by statute. Congress has enacted this particular piece of  
12 legislation and then specified certain elements which must be  
13 satisfied.

14 There's no such thing as common law crimes, absolutely  
15 none. In fact in this case you might recall the reference  
16 that one of the statutes, health care fraud, was not enacted  
17 until August of 1996. In other words, at the beginning of  
18 this conspiracy such a criminal statute did not even exist,  
19 which is why the Government is making an allegation of mail  
20 fraud, a different type fraud.

21 Anyway, the bottom line is that everything is structured.  
22 Everything has structured elements, overt act elements,  
23 mental state elements. I gave to you illustrations in my  
24 opening statement that having one without the other you  
25 simply have no crime.

1           There are certain terms -- I'm going to kind of flip  
2 through this real quickly. On page seven of the jury charge,  
3 and by the way, before I go through this let me remind you of  
4 a passage in the charge that you must view the charge as a  
5 whole. I'm just going to point out certain provisions for  
6 your reference but when you reference, you reference the  
7 entire charge as a whole. Reading on page seven is  
8 definition of terms and definition of terms give you some of  
9 the elements we talked about and some of those mental state  
10 elements I talked about had terms like knowingly and  
11 willingly and several other terms and those terms appear --  
12 again there's no such thing as common law crime. All  
13 criminal statutes are structured and those terms appear and  
14 those terms have to be satisfied; those definitions have to  
15 be satisfied.

16           Look for those terms, willingly, knowingly. There's  
17 principal and agent, which is a very common constant.  
18 Principal and agent for authority of an employee. Simply  
19 look at those terms and think about those terms not only as  
20 you apply to the statutes but also apply to organizational  
21 structures. Principal, agent, employer, employee simply  
22 means that one person can do for another, such as writing a  
23 letter of medical necessity as an agent for a doctor who's  
24 the principal.

25           On page twelve is the credibility of witnesses and

1 certain rules or -- I don't think -- rules is too strong a  
2 term, certain advice that the Court gives you -- instruction  
3 that the Court gives you on how to analyze the credibility of  
4 particular witnesses.

5 On page seventeen there is a passage called character  
6 evidence. In character evidence you have heard the  
7 reputation and opinion evidence about defendants William  
8 Filcheck and Scott Taylor's character for truthfulness,  
9 honesty and law-abiding nature. You heard Father George and  
10 Father Doug testifying about that. And you also heard, of  
11 course, the individuals themselves and how character evidence  
12 is significant and important in your deliberations and  
13 determinations.

14 When I talk about elements of an offense, we have  
15 elements of conspiracy on page twenty-three; elements of  
16 health care fraud on page twenty-six; elements of mail fraud  
17 on page twenty-seven; elements of aiding and abetting on page  
18 thirty-three and then on page thirty-five there's what I  
19 would consider to be a highly significant instruction on  
20 what's called a good faith defense and how someone's good  
21 faith and someone's character evidence can be based with  
22 criminal intent and the good faith defense goes to negate  
23 mental state element of the willingness -- willfulness and  
24 you need to factor those in when you do your analytical  
25 structures.

1           The charge also talks about what we call presumption of  
2 innocence, which I'm sure you all know from watching all  
3 those TV legal shows. It's called a burden of proof and a  
4 burden of production. The burden of proof and the burden of  
5 production lies with the Government. As the Judge told you  
6 someone charged with a crime starts with a clean slate.  
7 There's no evidence against him. The Government has the  
8 burden of producing evidence, that's the burden of production  
9 and they have a burden of proof meaning they have to make the  
10 evidence reach a high level and that level they have to reach  
11 is a level called reasonable doubt.

12           And if you note the charge says well, we're not going to  
13 define that; we're going to allow you to simply just use your  
14 common sense on that. You've watched enough lawyer shows to  
15 know that reasonable doubt basically is doubt that gives one  
16 pause, gives one hesitation. It's more than -- do we have a  
17 scales of justice in this room? I guess not. Usually do.  
18 It's more than just fifty-one percent, forty-nine percent.  
19 Reasonable doubt to most of you is like ninety/ten. The  
20 Government has a significant burden of proof beyond a  
21 reasonable doubt that will give one pause or hesitation. If  
22 there's pause or hesitation then you have reasonable doubt.

23           Let's get into some of the substantive issues here.  
24 Fraud. I disagree with Mr. Donley's characterization of this  
25 case as far as the easiness of the fraud. Mr. Donley said



1 well this is easy fraud. No, this isn't easy fraud at all.  
2 Fraud by definition is a material misrepresentation of a fact  
3 which signs are indeed an intent to deceive; you have to show  
4 damages.

5 An easy fraud would be a doctor billing for services he  
6 didn't perform and he took the temperature gradient test and  
7 he billed for it but they never performed it. That's the  
8 easy fraud. A test that no one performed.

9 This fraud is anything but easy. This fraud is an  
10 allegation, as Mr. Jaffe went through, that the test wasn't  
11 medically required and medically necessary and it wasn't in  
12 compliance with a CPT Code, whatever that is and I sat  
13 through two weeks of trial and outside of knowing what CPT  
14 means, that's about all I know about CPT Codes and then the  
15 doctor that had the bills submitted under the corporate name  
16 was not the proper doctor.

17 Well, is there any allegation that somehow the treatment  
18 performed by Doctor Filcheck was not performed by Doctor  
19 Filcheck? Every piece of paper that's submitted in this case  
20 that Doctor Filcheck performed has Doctor Filcheck's name on  
21 it, including the infamous letters of medical necessity which  
22 have his initials on. There's no misrepresentation. There's  
23 certainly no material misrepresentation of a fact.

24 Everything is up and up, above board as far as Filcheck and  
25 Taylor are concerned. Now it may be different in the case of

1 United States versus Burns and United States versus the  
2 Clinic but as far as Taylor and Filcheck are concerned, show  
3 me a material misrepresentation with them, an intent to  
4 deceive.

5 Everything that Bill Filcheck did has his name on it.  
6 Every back he cracked. Every patient he saw has his name on  
7 it. There's nothing that doesn't have his name on it that he  
8 didn't do.

9 And by the way these tests the Government likes to point  
10 out, I kind of thought they'd back off from that after they  
11 were confronted with the statutes but apparently they chose  
12 not to.

13 Doctor Filcheck testified that he didn't perform any of  
14 those tests except a couple temperature gradient tests; never  
15 performed any other tests. Has there been any document  
16 produced or did a witness testify that Doctor Filcheck  
17 performed the tests and they were submitted under someone  
18 else's name? He did what he did and the record so reflects  
19 and the patient records so reflect.

20 All right. I was trying to think of how I could fit this  
21 thing together knowing that Mr. Jaffe was going to do parts  
22 of this and wondering what the Government was going to do and  
23 I kind of broke it down into truth, lies, statistics and  
24 Government exhibits. And there was -- I want to take a  
25 minute to go over something here.

1           The Government cited to you and showed you a lot of  
2 exhibits, compilations of information, which I considered to  
3 be statistics and somewhat, at least incomplete or misleading  
4 and I want to share this with you. As Mr. Jaffe made  
5 reference, and I'm sure most of you haven't had your head in  
6 the sand for a while, you know that there's debates in this  
7 state over malpractice insurance. One of my little less  
8 reputable colleagues sent me this, said think about this.

9           "The number of physicians in the United States is  
10 seven hundred thousand. The number of accidental  
11 deaths caused by physicians per year is a hundred  
12 and twenty thousand. The number of accidental  
13 deaths per physician is zero point one seven one."

14 That's a statistic from the United States Department of  
15 Health and Human Services. Then he says think about this.

16           "The number of gun owners in the United States is  
17 eight hundred million -- eighty million. The number  
18 of accidental deaths per year for all age groups is  
19 fifteen hundred. The number of accidental deaths  
20 per gun owner is point zero zero zero zero one eight  
21 eight. Statistically then doctors are approximately  
22 nine thousand times more dangerous than gun owners.  
23 In fact not everyone has a gun but almost everyone  
24 has at least one doctor. Please alert your friends  
25 to this alarming threat. We must ban doctors before

1           this gets out of hand."

2           And then he added a postscript.

3           "As a public health measure I have withheld the  
4           statistics on lawyers for fear that the shock could  
5           cause people to seek medical attention."

6           Which gives you my Mark Twain the truth of it was you got  
7           statistics. Really it's what do they mean. What do these  
8           stats mean? A lot of them, I would suggest to you, were  
9           incomplete and misleading. Some were down right, call it ---  
10          intent to deceive.

11          We had exhibits from the Government as to Halstead's  
12          seminars attended and we had a big long list. Do you recall  
13          who looked at that or what was said? I don't care about all  
14          these seminars. These are the seminars I attended. Okay.  
15          Well, it might be an actual list of --- it's kind of  
16          misleading, isn't it? Are you trying to imply that someone  
17          else outside of Bill Twigg attended those seminars?

18          And some of those other statistics with the big color  
19          charts and bar charts and all that, what do they mean? Some  
20          of the coverage issues. The charts that said these are the  
21          days that Doctor Price was not present. So what? Okay. You  
22          know what's missing from those charts, and again, keep in  
23          mind the burden of production and the burden of proof rests  
24          with the Government. What is missing on those charts is what  
25          kind of insurance claim is it. Is it a chiropractic

1 insurance claim or is it a medical insurance claim? The  
2 Government says why do you care about that? Why do you care  
3 about it? You don't need to know about it. What do you mean  
4 we don't need to know about that? Wouldn't you think all  
5 this debate over when you treat people if they have  
6 chiropractic insurance with chiropractic care and you treat  
7 people if they have medical insurance with medical care?  
8 Don't we want to make a distinction on those statistics, on  
9 all those charts, with the type of coverage and what the  
10 insurance claim is? And, again, the burden of proof and the  
11 burden of production lies with the Government.

12 And I think one of the best pieces of evidence, and you  
13 could have heard Mr. Donley's jaw hit the floor, when the  
14 Medicare representative testified that all the Medicare  
15 claims were what? They were batched under chiropractic care.  
16 They were batched under chiropractic -- they were  
17 chiropractic care. Let's see. Wait a minute. Let's follow  
18 some logic here. They were chiropractic care, which was  
19 filed for chiropractic care to go with that chiropractor.  
20 Show me the material misrepresentation of the facts, ladies  
21 and gentlemen. Show me where that's wrong somewhere.

22 Am I the only one that is not thick enough or big enough  
23 or smart enough to figure that out? There isn't any material  
24 misrepresentation of fact when you submit a chiropractic bill  
25 for chiropractic treatment performed by the chiropractor

1 under chiropractor care. That's at least five of their  
2 substantive counts right there.

3 We also have in law what's called the best evidence rule  
4 and some of the best evidence is original recordings and you  
5 have a lot of paper. I'm going to go through some of those  
6 just like Mr. Donley. Mr. Donley did an excellent job of  
7 going through some of the exhibits. I want to do that too.  
8 I'm going to do that in about five or ten minutes so I'm  
9 going to tell you where some of the exhibits are too.

10 Some of the best evidence is these tapes and these tapes  
11 are the best evidence. Why? Because you can hear the  
12 voices. Particularly when Mr. Donley says Mr. Filcheck ---  
13 Doctor Filcheck said this and Doctor Filcheck said that, play  
14 the tape. Play the tape of the ten-point exams. Play the  
15 tape of his statement that he gave to Trooper Hudson. Hear  
16 his voice. Listen to what he's saying and more important  
17 listen to how he's saying it.

18 I've always maintained that sometimes it's just as  
19 important how you say something as what you say. Mr. Jaffe  
20 said about the intonations of raising one's voice or lowering  
21 one's voice. Listen to the tape. Listen to the tapes.  
22 You're going to have a recorder back there. You'll have the  
23 tapes back there and by the way, don't listen to part of the  
24 tape. Don't rest on any snippet of tape; play the entire  
25 damn tape. It's so damaging ---

1 THE COURT: I don't think you realized what you just  
2 said, Mr. Zimarowski, but I caution you on your language.

3 MR. ZIMAROWSKI: I'm sorry, Your Honor. Play the  
4 entire tape. I apologize, Your Honor. Again, I did  
5 something wrong and I apologize. Play the tape. Play the  
6 tape in its entirety.

7 I gave you a quote from Sir Arthur Conan Doyle and I want  
8 to repeat it and that's on the train ride back from the  
9 countryside, Doctor Watson's saying to Holmes, "Is there any  
10 other point to which you would wish -- you wish to draw my  
11 attention?". Holmes replies, "to the curious incident of the  
12 dog in the nighttime". To which Doctor Watson replies, "but  
13 the dog did nothing in the nighttime." Holmes says, "that's  
14 the curious incident.

15 Mr. Jaffe went into the absence of certain witnesses and,  
16 again, you need to view the absence of witness always in the  
17 context of the burden of proof and the burden of production.  
18 If the Government had witnesses they could have, should have,  
19 would have produced them. Okay. What's the first category  
20 that the Government is conspicuous in it's absence? The  
21 first category of witnesses is the patients. Think about it.  
22 How many patients testified? How many patients testified  
23 there was nothing wrong with them? How many patients  
24 testified they were defrauded? How many patients testified  
25 they got unnecessary treatment? No patient testified. No

1 patient. Conspicuous in its absence.

2 Number two. Billing witnesses. You heard reference made  
3 to Alma Parkinson. She was head of billing and her name was  
4 being mentioned by several witnesses. There's an absence of  
5 witnesses on billing witnesses. Why? Well, you had Twigg.  
6 And you had everyone else, Filcheck, Taylor, virtually every  
7 other party said that billing was controlled by Twigg and  
8 Burns. Price. Everyone said that. You had Filcheck and  
9 Taylor who said they were run out of the billing office.  
10 They knew nothing about billing. They were not responsible  
11 for whose name was on the forms or how the forms were filled  
12 out. There's no billing witnesses; none whatsoever. What  
13 can you infer circumstantially from that? That the  
14 Government had no witnesses that would say that Doctor  
15 Filcheck and/or Doctor Taylor had anything whatsoever to do  
16 with billing and no knowledge, which is the essence of that  
17 rather complex pattern.

18 Staff and tech witnesses. We've heard a Sean name  
19 mentioned, E.J. name being mentioned, several other witnesses  
20 who performed the tests, who did the temperature gradient  
21 tests, who performed the ultrasounds, who performed a lot of  
22 these other tests. Did any of them ever testify as to who  
23 ordered them to do the tests? I didn't hear any of them  
24 testify. Why? Well, because is it contradicted that Bill  
25 Twigg and Robert Burns ordered the tests? Is that anywhere?



1 Do you have any hesitation or pause about who ordered the  
2 tests? Twigg or Burns.

3 So no staff. No tech witnesses. Physical therapist.  
4 Well, she's about the only one that testified. She testified  
5 she performed some of the tests. I think her main purpose  
6 though was mainly trying to do some sort of circumstantial  
7 inference that Halstead was trying to get her fired. You can  
8 address that issue. But the physical therapist performed  
9 some of these tests. She so testified. She testified that  
10 Bill Twigg ordered them. Bill Twigg ordered the tests, along  
11 with Burns.

12 Picking up on what Mr. Jaffe said, there were no experts  
13 that testified in the case on behalf of the Government. No  
14 experts that testified that the temperature gradient test,  
15 the ultrasound, any of these tests were improper or unsound  
16 or a doctor to go through all the patient files, as Mr. Jaffe  
17 pointed out, and said, you know, I've gone through every one  
18 of these patient files and every one of these tests was  
19 uncalled for. There's been no witnesses, conspicuous in its  
20 absence.

21 And my last category about absent witnesses, though I  
22 think some of them took the stand, I think they're absent  
23 between the ears and that is the insurance witnesses. They  
24 were, as a group, pretty absent as far as any of the details  
25 of their policies and procedures and how things work, even

1 what some of the definitions and terms were. They were  
2 absent between the ears. Intentionally or unintentionally,  
3 that's for you to decide.

4 All right. What did they actually say is my next  
5 category as I was flipping through this. What did Twigg  
6 actually say? Now Mr. Jaffe was quite correct in pointing  
7 out to you, you know, Mr. Twigg was on the stand for, I think  
8 it was part of Monday, a whole day and part of another day.  
9 I don't know, ten hours and I bet Mr. Donley spent maybe  
10 about five sentences with him. Why? What did Mr. Twigg  
11 establish? Mr. Twigg established that him and Burns ran the  
12 clinic and the chiropractors had nothing to do with any of  
13 the decision making process. Look to Twigg. Twigg  
14 exonerates Bill Filcheck and Scott Taylor.

15 What about Doctor Price? Doctor Price testified right  
16 after that. Well does she inculcate Bill Filcheck, Scott  
17 Taylor? Absolutely not. Just the opposite. She says the  
18 same thing. They complained about: A) working conditions.  
19 They also complained about testing and they complained about  
20 testing to Doctor Price.

21 What would give rise to any type of circumstance to think  
22 if you were Bill Filcheck or Scott Taylor that Doctor Price  
23 has not approved a test if you complain to her about the test  
24 and she just says that's the way Burns wants -- Burns and  
25 Twigg want it to be run and she agrees with it. Is she

1 charged? I must have missed that in the name of the  
2 indictment about Rebecca Price. She must have been dropped  
3 off of the indictment, I guess along with the physical  
4 therapist and along with some of the other staff members of  
5 the clinic. None of those are here charged.

6 Medina. What did Medina say? Medina said the same  
7 thing. Medina basically said that he agreed with and signed  
8 everything in compliance with Doctor Burns. Well, I don't  
9 think -- I'm not sure that it was testified to but let's  
10 assume that Filcheck or Taylor went to Doctor Medina and said  
11 what about this particular test that you signed. What do you  
12 think Medina would say? Well, that's fine with me. That's  
13 what his honor does, it's fine with me. Filcheck and Taylor  
14 can't rely upon that? After all, Medina's a doctor.

15 And regarding Medina's "retirement", and put that in  
16 quotes, down in Florida, well we all know he was still  
17 medical director and he was still getting stuff sent down to  
18 him and it was coming back and who was that from, by the way?  
19 Well, that was not only from Twigg and from Filcheck and from  
20 Taylor but also from Price. Price said that too.

21 Again, what Mr. Donley said as well. What I remember  
22 from the testimony, what Mr. Donley remembers from the  
23 testimony is not evidence. It's what you remember the  
24 testimony is the appropriate evidence.

25 You had Bill Filcheck testify and you had Bill Filcheck's